



Patent

Attorney Docket No. GEMS8081.070

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Mullen et al.
Serial No. : 09/681,475
Filed : April 13, 2001
For : **Method and System for Graphically
Displaying Consolidated Condition Data
for Equipment in A Host Facility**
Group Art No. : 3627
Examiner : Jaketic, B.

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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Board of Appeals
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APPEAL BRIEF PURSUANT TO 37 C.F.R. §§1.191 AND 1.192

Dear Sir:

This Appeal Brief is being filed in furtherance to the Notice of Appeal mailed to the U.S. Patent & Trademark Office on July 21, 2004.

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1. REAL PARTY IN INTEREST

The real party in interest is General Electric Company and GE Medical Systems Global Technology Company, LLC, the Assignee of the above-referenced application by virtue of the Assignment to GE Medical System Global Technology Company, LLC recorded on May 21, 2001, at reel 011831, frame 0075.

2. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any other appeals or interferences related to this Appeal. The undersigned is Appellant's legal representative in this Appeal. General Electric Company, the Assignee of the above-referenced application as evidenced by the documents mentioned above, will be directly affected by the Board's decision in the pending appeal.

3. STATUS OF THE CLAIMS

Claims 1-34 are currently pending, and claims 1-34 are currently under final rejection and, thus, are the subject of this appeal.

4. STATUS OF AMENDMENTS

The Appellant has not submitted any amendments subsequent to the Final Office Action mailed on April 21, 2004.

5. SUMMARY OF THE INVENTION AND OF THE DISCLOSED EMBODIMENTS

The present application has been pending for three-and-one-half years, being filed April 13, 2001. "The present invention relates generally to equipment monitoring and administration and, more particularly, to a method and system of graphically displaying consolidated condition data for equipment of a host facility", preferably a medical institution. *Specification*, ¶ 1. The invention enables the display, in real-time, of status information, including device diagnostic data and reminder data, for a plurality of devices in a medical institution. *Id.* at ¶ 6.

As explained in the Background of the Invention, it is imperative that administrators of a facility's assets, such as hospital facilities that include many medical

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devices, maintain a close watch of the operating conditions of these assets to quickly identify those that are in need of repair and the location of those devices within a given facility. *Id.* at pg. 1, ¶¶ 1-3. An automated remote management tool, such as that presently claimed, is desirable to aggressively monitor and manage all the various medical devices in a hospital in order to reasonably detect and illuminate improper device operations. *Id.* at pg. 2, ¶1. Accordingly, the present invention is directed to a system that can provide a single interface having the relevant condition data to reasonably alert the facility officials of what devices are in need of repair and what repair is needed – providing device diagnostic data and device reminder data in a convenient graphical user interface. *Id.* at pg. 2, ¶3.

A service system 10 is configured to monitor, collect data, and analyze data from medical equipment in one or more medical institutions and then generate reports thereon. *Id.* at ¶21. Specifically, “a consolidation system 220 consolidates manually entered data 222 as well as automatically generated information 224 in a single consolidation engine 226 housed in a remote processing facility 225.” *Id.* at ¶37. That is, the consolidation engine 226 receives information from multiple distinct sources, including data sources 222, 224, as illustrated by bi-directional communication links 230, 228, respectively. *Id.* at ¶39.

After processing, analyzing, and synthesizing the wide variety of data received from the plurality of resources, the consolidation engine 226 “generates a graphical representation 232 configured to include the consolidated auto-generation and manually-entered data.” *Id.* at ¶40. The graphical representation 232 is embodied as a very specific GUI 240 designed to succinctly convey the wide spanning data processed, analyzed, and synthesized by the consolidation engine 226. *Id.* As such, the GUI includes servicing information that is grouped in an “Alerts” 242 and a “Reminders” 244 arrangement as well as news groupings. A variety of navigation tabs are included such as a “Services Home” tab, a “Solution Services” tab, an “E-Services” tab, an “Asset Management” tab, a “Financial Services” tab, and an “Education” navigational tab. *Id.* at ¶42, 45, and 46.

Therefore, the invention includes a specific system and method for gathering, processing, analyzing, and conveying particular data. The system consolidates wide

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spanning information sources to generate a GUI expressly designed to facilitate the unique managerial requirements associated with the variety of complex devices associated with medical institutions.

6. GROUNDS OF REJECTION

Claims 1-10 and 13-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Conway (USP 5,732,401) in view of Cook et al. (USP 6,668,203). Additionally, claims 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Conway and Cook et al. in further view of Gidwani (USP 6,640,239).

As will be explained below, claims 1, 3-6, 9, 12, 14, 17, 18, 20, 21, 23, 25, and 32-34 do not all stand or fall together because at least each of these claims includes or adds subject matter that is patentably distinct from the art of record.

The Examiner has improperly rejected the pending claims. The Examiner has misapplied long-standing and binding legal precedents and principles in rejecting the claims under §103(a). Specifically, Appellant has these distinct basis for appeal. The first is an improper assertion of inherency, the second is a defective printed matter rejection, and the third is an unsustainable obviousness rejection. Accordingly, Appellant respectfully requests full and favorable consideration by the Board and ultimate allowance of claims 1-34 as Appellant believes claims 1-34 are currently in condition for allowance.

7. REJECTION BASED ON "INHERENCY"

The Examiner relied on an assertion of inherency in proffering the rejection of multiple claims. For example, in addressing claims 1-10 and 13-34 as a whole, the Examiner stated, "It is therefore *inherent* that Cook et al teach the step of identifying devices in need of repair." April 21, 2004 Office Action, pg. 2, ¶3 (emphasis added). The Examiner must provide rational or evidence tending to show the asserted inherency. See MPEP §2112. Furthermore, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). Simply, in proffering a rejection relying on inherency the Examiner must first overcome a heavy burden. Specifically:

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To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

MPEP §2112, *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citation omitted).

Therefore, "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). It then follows that the Examiner must provide objective evidence or cogent technical reasoning to support the conclusion of inherency or the rejection fails and must be withdrawn.

Appellant traversed the finding of inherency by explaining that the Examiner failed to provide reasoning, rationale, or evidence of any kind. May 27, 2004 Response. The Examiner did not respond with any support for the conclusion of inherency. Rather, the Examiner sustained the rejection based on inherency but disregarded the express requirements of MPEP §2112. Therefore, the conclusion of inherency is unsustainable because the Examiner did not meet the requisite burden and, as such, the rejection is not sustainable.

8. REJECTION BASED ON NONFUNCTIONAL DESCRIPTIVE MATERIAL

The Examiner also asserted that although numerous claim elements were not taught or suggested by the art of record, the Examiner gave no consideration to these elements because, in the Examiner's interpretation, the differences "are only found in the nonfunctional descriptive material" and therefore, "do not distinguish the claimed invention from the prior art in terms of patentability." April 21, 2004 Office Action, pg. 3, ¶2 to pg. 4, ¶3. To support this conclusion, the Examiner cited *In re Gulack* and *In re Lowry*. *Id.* citing 703 F.2d 1381, 217 USPQ 401 (Fed. Cir. 1983) and 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). The Examiner's position cannot be sustained.

After the Examiner's first assertion of this position in the Office Action mailed November 18, 2003, Appellant traversed the rejection and directed the Examiner's attention to a further review of both *In re Gulack* and *In re Lowry* for a full explanation of "printed

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matter" rejections and the extremely narrow circumstances under which such should be proffered. *Id.*

The Examiner has incorrectly applied a "printed matter rejection" under §103 articulated in *In re Gulack*, 703 F.2d at 1385 n.8. *In re Gulack* and *In re Lowry* are both explicit that such rejections should not be used liberally, i.e. only under very narrow circumstances. *Id.* and 32 F.3d at 1584. To this end, the *In re Lowry* Court explained that "printed matter [rejection] cases have no factual relevance where 'the invention as defined by the claims requires that the information be processed not by the mind but by a machine, computer.'" 32 F.3d at 1582 citing *In re Bernhart*, 417 F.2d 1395, 1399, 163 USPQ 611, 615 (CCPA 1969) (emphasis added). Therefore, under both *In re Gulack* and *In re Lowry*, since the current claims require processing by a computer and not the human mind, the Examiner is "not at liberty to ignore such limitations." 32 F.3d at 1584.

The Examiner is obligated to afford all claim elements patentable consideration, but has heretofore not done so. The Examiner's position is clearly improper and cannot be sustained. Accordingly, upon proper consideration of all claim elements, as required under the MPEP, C.F.R., U.S.C., and substantive case law on point, the claims are patentably distinct over the cited references.

9. REJECTION UNDER §103(A) BASED ON CONWAY IN VIEW OF COOK ET AL.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP §2142. The present rejection falls drastically short of the standard that must be met in order to sustain a rejection under §103(a). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes each and every element of the claimed invention, but also provides "a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

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In particular, to establish a *prima facie* case of obviousness, the Examiner must affirmatively establish three independent and distinct criteria as follows:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP §2143.

As will be shown, the Examiner has clearly failed to meet these criteria for establishing a *prima facie* case of obviousness. Specifically, the combination of Conway and Cook et al. proffered by the Examiner is (1) not supported by the references or by the knowledge of one of ordinary skill, (2) would not lead to a reasonable expectation of success, and (3) the combination does not teach or suggest all the claim limitations.

LACK OF MOTIVATION TO COMBINE

Conway teaches an "activity based *cost* tracking system" while Cook et al. teaches a method of "static machine analysis of sensor data from dynamic processes." Conway Title and Cook et al. Title (emphasis added). The combination of systems and methods does not teach, suggest, or provide any motivation that would result in the claimed "method and system for *graphically displaying* consolidation condition data for equipment in a host facility." Title of present application (emphasis added). Simply, the references and any combination thereof do not suggest a "method and system for graphically displaying consolidation condition data for equipment in a host facility." *Id.*

Conway is directed to a system and method of tracking the use of various systems, equipment, supplies, and individuals of a medical institution to "build detailed records of *activities* and the *costs* thereof in a manner permitting a wide variety of statistical and other analysis." Conway Abstract (emphasis added). Conway teaches the collection of data from a medical institution for the sole purpose of compiling "detailed and accurate *cost* accounting records." Conway, col. 2, lns. 25-29 (emphasis added). That is, the sole purpose of Conway is to collect and compile information or data that is pertinent to cost tracking.

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Conway specifically states that "in accordance with principles of the present invention, the movements of personnel, supplies, and equipment are monitored and data on these movements is processed to produce detailed and accurate cost accounting records associated with particular medical services rendered." Conway, col. 2, lns. 24-28. Conway explains that the information collected is then used to estimate costs of future procedures and to evaluate costs of various medical procedures. See Conway, col. 2, lns. 29-33. In order to perform these data collection functions, Conway tracks movements of caregivers with transponders and tracks objects, such as supplies which are consumed during a patient's care, and the use of equipment which may not be consumed. See Conway, col. 2, lns. 34-50. While Conway may include maintenance information to indicate the time of the next scheduled periodic maintenance (Col. 9, lns. 10-35), nowhere does Conway discuss collecting, sorting, or displaying device diagnostic data and device reminder data of any particular device.

Conway also does not disclose any particular graphical user interface for displaying data in any particular manner. Accordingly, the present invention is an improvement over Conway in that the present invention is directed to a specific graphical user interface that collects, sorts, and displays data associated with a device's status that not only includes device reminder data, but also device diagnostic data. See claim 1. That is, Conway not only does not teach or suggest the collection of device reminder data and device diagnostic data, but does not teach the particular graphical user interface that collects, sorts, and displays data associated with a device's status.

Cook et al. teaches a state machine model for tracking a variety of processes to perform "remote facility monitoring and inspection." Cook et al., col. 1, lns. 11-18. Cook et al. identifies a variety of areas where such a system would be deployed including nuclear power plants, pharmaceutical companies, chemical manufacturers, and other areas that include "expensive, dangerous, or controlled materials or information of any kind." Cook et al., col. 1, lns. 25-28 and lns. 39-41.

Cook et al. discloses typical applications for its state machine to include nuclear material handling sites, weapons facilities, nuclear power plants, pharmaceutical companies, chemical manufacturers, and generally facilities that handle expensive, dangerous, controlled materials, or one-of-a-kind objects. See Cook et al., col. 1, lns. 29-

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46. Accordingly, there is a total lack of motivation to combine Conway and Cook et al. since each is directed to very different purposes. That is, Conway is directed to cost tracking within a medical institution while Cook et al. is directed to a state machine model for tracking a variety of processes to perform remote facility monitoring within very specialized facilities such as nuclear material handling sites, weapons facilities, nuclear power plants, pharmaceutical companies, chemical manufacturers, and generally facilities that handle expensive, dangerous, controlled materials, or one-of-a-kind objects.

Id.

NO REASONABLE EXPECTATION OF SUCCESS

Any combination of Conway and Cook et al. does not yield the claimed "method and system for graphically displaying consolidation condition data for equipment in a host facility" and, therefore, there is no motivation to combine the references in the manner proffered by the Examiner. Furthermore, there would be no reasonable expectation of success when combining the references to create that which is claimed.

A combination of Conway and Cook et al., though unmotivated, would result in, at best, a redundant way of remotely monitoring costs. While it is Applicant's position that Conway and Cook et al. have very dissimilar intents and purposes, and therefore, one skilled in either art would not be motivated to combine the references, certainly any combination would not result in the claimed invention. That is, one of ordinary skill in the art would not have a reasonable expectation of success because, as stated above, a combination of Conway and Cook et al. would not result in a system or method as claimed. In fact, upon reviewing the references as a whole, one of ordinary skill in the art would actually be inclined to believe a combination would not be possible because the proffered modification of Conway with Cook et al. would change the principle of operation of Conway.

As stated above, Conway is expressly limited to cost tracking. The ultimate goal of Conway is to aid medical institutions in controlling and limiting costs. See Conway, col. 1, lns. 10-16. To add the state machine system of Cook et al., which is designed to monitor areas that include "expensive, dangerous, or controlled materials or information of any kind" to the cost tracking system of Conway et al. would result in a redundant system that would inevitably raise costs rather than control them. Cook et al., col. 1, lns.

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25-28 and lns. 39-41. One of ordinary skill in the art would recognize that redundancy is typically expensive and only employed when necessary, such as areas like nuclear power plants, as taught by Cook et al. Accordingly, under MPEP §2143, a combination of Conway and Cook et al. not only lacks the requisite motivation but is impermissible because the modification would change the principle of Conway of controlling costs. Such a system and method would be capable of receiving and processing data remotely using the state machine of Cook et al. to perform analysis for cost tracking. However, the claimed invention is not directed to cost tracking or redundant remote facility inspection. Rather, the claimed invention is a system and method for consolidating condition data from equipment to communicate specific information such as device diagnostic data and device reminder data through a GUI.

Therefore, the proffered combination is unsupported because there is no motivation to combine the references, nor is there a likelihood of success that such a combination would be successful in yielding the claimed invention. This point is further illustrated by the fact that the combination does not teach or suggest all the claim limitations as required under MPEP §2143 to establish a *prima facie* case of obviousness. Therefore, as will be further shown below, it is clear that the proffered rejection fails to establish a *prima facie* case of obviousness.

Independent Claim 1

Regarding claim 1, the Examiner rejected the claim as unpatentable over Conway in view of Cook et al. In the Office Action mailed November 18, 2003, the Examiner asserted that Conway discloses a GUI that *inherently* "alerts the user to devices requiring immediate attention and of devices requiring routine attention." November 18, 2003 Office Action, pg. 2, ¶13. The Examiner stated that any such alerting of the user is inherent because Conway fails to disclose communicating any such alerts. Rather Conway is clear that the only information communicated is "detailed cost analysis information...[that] may be reported to an operator through a display monitor 34 or generated on a printer 36." Conway Col. 4, lns. 64-66.

Subsequently, in the Office Action mailed April 21, 2004, the Examiner rebuffed the previously asserted position and stated that "Conway teaches that the GUI displays the time of the next scheduled maintenance (see col. 9, lines 24-33)." April 21, 2004 Office Action,

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pg. 2, ¶2. (emphasis added). This statement is not only wholly inconsistent with the Examiner's previous position cited above, but contravenes that directly taught by Conway. Conway does not teach any GUI at all -- let alone a GUI to display the time of the next scheduled maintenance, as asserted by the Examiner. In order to "teach," the reference must make an explicit statement to that end. Therefore, the statement of the Examiner that "Conway discloses a system and method for...collecting...data...and displaying it on a graphical user interface (34)" is misleading. Conway does not even teach a GUI. Rather, at best, Conway merely teaches the use of a display. *See* Fig. 1, no. 34. One of ordinary skill in the art will readily recognize that a display is not the same as a graphical user interface.

Specifically, one of ordinary skill in the art will readily recognize that a GUI is generally a conglomeration of information specifically displayed in a manner that, by definition, is to be interacted with by a user. That is, a GUI is organized and designed to (1) arrange a variety of information for conveying to a user and (2) allow interaction and interfacing of the user with the information through the GUI -- thus the term "graphical user interface." On the other hand, a display may be a simple passive device. That is, while a display is configured to convey information to a user, a display does not necessarily allow user interfacing and interaction, as does a GUI. Therefore, while a given display may display a GUI, displays have existed well prior to the advent and introduction of GUIs and, thus, a disclosure of a display is not a teaching of a GUI. As will be shown below, while Conway teaches the use of a display, which may be configured to display GUIs, Conway does not teach or suggest any particular GUI or manner of displaying information on the display. In fact, Conway does not describe what it would display -- it is unknown. Therefore, Conway certainly does not teach or suggest the specific GUI and manner of displaying the specific data and information in the manner claimed.

While Conway uses a display in connection with its system, it is silent as to specifically how information is displayed and what specific information is displayed. In any case, Conway does not teach or suggest the use of a graphical user interface arranged as called for in the present claims nor does it teach or suggest the sorting and displaying of device specific data that includes device diagnostic data and device reminder data, as presently claimed. Accordingly, the present invention is a clear improvement over that taught by Conway and Cook et al.

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Aside from the fact that Conway does not teach or suggest displaying diagnostic data or device reminder data in a GUI, Conway also does not teach or suggest the other elements presently claimed. Claim 1, in part, calls for a particular system for managing the diagnostic data and device reminder data and a very specific GUI within which the diagnostic data and device reminder data are displayed in a particular way. That is, claim 1 calls for "remotely collecting condition data representative of device status for a number of devices utilized in an institution, the condition data segregated into device diagnostic data and device reminder data." Therefore, the condition data collected is segregated into two categories: device diagnostic data and device reminder data. Conway fails to teach or suggest any such arrangement or segregation.

As such, the Examiner applied another reference, Cook et al., and asserted that Cook et al. teaches "the step of separately displaying and identifying the device diagnostic data." April 21, 2004 Office Action, pg. 2, ¶3. While Cook et al. teaches displaying in a manner to allow comparison of "declared processes" and "actual process," Cook et al. does not teach or suggest "separately displaying and identifying on a graphical user interface (GUI) the device diagnostic data and device reminder data," as claimed, because Cook et al. does not teach receiving or compiling "device diagnostic data" at all. While Cook et al. does teach a system for monitoring "activities," the claimed invention calls for "separately displaying and identifying on a graphical user interface (GUI) the device diagnostic data and the device reminder data." Claim 1 (emphasis added). Simply, claim 1 is clear that the condition data includes data specific to a diagnosis of the device and reminders for a device and not an activity. Therefore, contrary to the position asserted by the Examiner, Cook et al. *does not* teach or suggest "the step of separately displaying and identifying the device diagnostic data." April 21, 2004 Office Action, pg. 2, ¶3.

Furthermore, beyond the fact that Cook et al. does not teach or suggest collecting the type of data called for in claim 1, Cook et al. also does not teach any particular manner of communicating the data collected and certainly does not teach that any data be displayed "separately" within a specific GUI. That is, Cook et al. does not teach or suggest any manner or form for displaying data and, therefore, does not teach or suggest "the step of separately displaying and identifying the device diagnostic data," as the Examiner asserted. Simply, the interpretation of Cook et al. articulated by the Examiner is unsupported by the reference.

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Nowhere in the art of record is "the step of separately displaying and identifying the device diagnostic data" taught or suggested.

Where Conway is solely directed to cost analysis of procedures, equipment usage, supplies, etc., the present invention is directed specifically to a way to report the status of a specific piece of equipment in a convenient manner to a facility administrator. The two are very different purposes, and, accordingly, have very different systems to accomplish these goals. While the present invention is directed to a way to graphically display this consolidated condition data, Conway is directed to a process of tracking costs, and is virtually silent on how to graphically display such data to a user. Therefore, not only are the goals of the two systems wholly different, each is directed to very different systems – Conway being directed to a process for cost tracking, while the present invention is directed to a way to get diagnostic and status information to an administrator. Also, where Conway is focused on cost analysis of procedures, the present invention is directed to status of specific equipment. As previously discussed, Cook et al. does not help in rendering the present claims obvious since a combination of Conway and Cook et al. would result in, at best, a redundant system for remotely monitoring costs. However, Conway and Cook et al. have very dissimilar intents and purposes, and, therefore, one skilled in either art would not be motivated to combine the references, and certainly any combination would not result in the claimed invention. Nevertheless, the proffered combination of Conway and Cook et al. simply does not teach or suggest that which is expressly called for in claim 1.

Therefore, claim 1 includes elements that are not taught or suggested by the art of record and, as such, is patentably distinct from the art of record. As such, claims 2–8 are in condition for allowance pursuant to the chain of dependency. However, claims 2–8 include elements that are additionally distinguishable over the art of record and thus do not stand or fall with any group.

Claim 3

Claim 3 calls for "indicating on the GUI the devices requiring immediate attention including identifying the devices in need of repair, servicing, and updating." In the Office Action mailed April 21, 2004, the Examiner acknowledged that Conway does not teach or suggest that which is claimed but summarily concluded that Appellant's previous arguments

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in this regard are "moot in view of the new grounds of rejection." April 21, 2004 Office Action, pg. 6, ¶1. However, upon a review of the "new grounds of rejection" provided in the Office Action mailed April 21, 2004, it is readily apparent that the Examiner did not proffer any "new" rejection. That is, though Cook et al. does not teach or suggest that which is claimed, the Examiner concluded that "[i]t is therefore inherent that Cook et al. teach the step of identifying devices in need of repair." *Id.* at pg. 2, ¶3 (emphasis added). As shown above, this is improper because a conclusion of inherency requires the Examiner to overcome a stiff evidentiary burden that has not been met. Appellant challenged the use of inherency in the Response mailed February 18, 2004, but the Examiner did not comply with MPEP §2112 by providing Appellant with the requisite support for the assertion of inherency. Therefore, the rejection must be reversed. Further, claim 3 includes elements not taught or suggested by the art of record and is patentably distinct.

The Examiner's acknowledgement that the art of record does not teach or suggest "repair, servicing, and updating" is indicative of the fact that the art of record does not teach or suggest gathering and displaying device diagnosis and device reminder data. That is, it is through the claimed system and method for gathering and displaying consolidated condition data including device diagnosis and device reminder data that the "repair, servicing, and updating" called for in claim 3 is achieved. Specifically, the claimed condition data including device diagnosis and device reminder is utilized in identifying and carrying out the claimed "repair, servicing, and updating." The fact that the art of record does not teach or suggest "repair, servicing, and updating" is further evidence that, as shown above, the art of record does not teach the claimed system and method for gathering and displaying consolidated condition data including device diagnosis and device reminder data.

Claim 4

Claim 4 calls for "displaying on the GUI a reminder profile including a list of devices that require routine attention." Despite repeated requests for explanation, the Examiner entirely failed to address the elements of claim 4. See Response filed May 27, 2004. Neither Conway nor Cook et al. teach any such "reminder profile." As such, claim 4 is patentably distinct from the art of record.

Claim 5

Regarding claim 5, the claim, in part, calls for "displaying on the GUI news updates relating to the devices in the medical institutions." The Examiner acknowledged that

“Conway fails to teach the step of displaying general remarks and news updates regarding the device.” April 21, 2004 Office Action pg. 3, ¶2. However, the Examiner concluded that, in his interpretation, because the differences “are only found in the nonfunctional descriptive material,” the claim elements “do not distinguish the claimed invention from the prior art in terms of patentability.” *Id.* To support this conclusion, the Examiner then cited *In re Gulack* and *In re Lowry*. As previously set forth, the Examiner erroneously applied the precedence of *In re Gulack* and *In re Lowry*. In fact, as shown above, the Examiner ran directly afoul of the very precedent cited. Upon proper consideration of all elements of claim 5, it is clear that the claim is patentably distinct from the art of record.

Claim 6

Similarly, claim 6 calls for “displaying news links to a number of news GUIs configured to display information about one of a device, a device technology, and a device development.” These elements must be afforded patentable consideration. As previously explained, Conway does not teach extrapolating, displaying, or otherwise communicating information other than information specific to tracking and controlling costs. See Conway, col. 4, lns. 64-66 and Col. 25, lns. 1-8. Therefore, Conway does not teach or suggest “displaying news links to a number of news GUIs configured to display information about one of a device, a device technology, and a device development.” Additionally, Cook et al. is explicitly limited to information regarding “activities” that are “visible to an inspector.” Conway, col. 6, lns. 5-8. Therefore, the claimed news links are well outside that which is taught or suggested by Cook et al. As such, claim 6 is patentably distinct from the art of record above and beyond the chain of dependency.

For at least the above reasons, claims 3, 4 and 6 include subject matter additionally distinguishable from the art of record. Accordingly, claims 3, 4, and 6 must be reviewed independently.

Independent Claim 9

Regarding claim 9, the Examiner failed to expressly address that which is claimed. Rather, the Examiner summarily dismissed claim 9, as well as the other independent claims, simultaneously. This action, too, is improper. In order to establish a *prima facie* case of obviousness, the Examiner carries the burden of showing that the art of record teaches or suggests each and every element of each and every claim. MPEP §2143.

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Claim 9 calls for a GUI and further defines the elements displayed in the GUI. That is, claim 9 calls for a very specific GUI including (1) "an alert section having a number of alert indicators configured to indicate urgent items relating to a device," (2) a "reminder section having a number of reminder indicators configured to display scheduled items relating to the device," and (3) a "general information section having a number of general information textlinks configured to display product updates and technology news specific to the device." As previously stated, Conway does not teach any "GUIs" whatsoever. Rather, Conway simply states that information to be communicated to an operator may be displayed on a monitor but fails to teach or suggest any method of displaying or particular manner in which to display information. Conway, col. 4, lns 64-66. As such, Conway does not teach or suggest the elements called for in claim 9 that define the specific information and manner of displaying within the particular GUI.

Similarly, Cook et al. does not teach or suggest any particular GUI for communicating such information. That is, Cook et al. does not even suggest any particular GUI, let alone one including (1) "an alert section having a number of alert indicators configured to indicate urgent items relating to a device," (2) a "reminder section having a number of reminder indicators configured to display scheduled items relating to the device," and (3) a "general information section having a number of general information textlinks configured to display product updates and technology news specific to the device."

Neither Conway nor Cook et al. teaches or suggests any particular GUI and certainly neither teaches or suggests that any GUI include the specific elements affirmatively called for in claim 9. The Examiner simply ignored these explicitly claimed elements. The MPEP is clear that to establish a *prima facie* case of obviousness, the Examiner carries the burden of affirmatively showing that the art of record teaches or suggests each and every element of each and every claim. MPEP §2143. The Examiner has clearly failed to meet this burden; therefore, claim 9 is patentably distinct from the art of record.

Claim 14

Regarding claim 14, the Examiner once more improperly concluded that, under *In re Gulack* and *In re Lowry*, the Examiner could disregard claim elements because "the names of the tabs constitutes nonfunctional descriptive material." April 21, 2004 Office Action, pg. 3, ¶3. However, as previously shown, the Examiner is "not at liberty to ignore such limitations." In re Lowry, 32 F.3d at 1584. Therefore, upon proper review of the claim

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elements, it is clear that claim 14 is patentably distinct from the art of record in that Conway and Cook et al. do not teach or suggest a GUI having any such tabs nor such tabs configured to link a user to a number of service GUIs, as claimed. As such, claim 14 is patentably distinct from the art of record above and beyond the chain of dependency.

For at least the above reasons, claim 14 includes subject matter additionally distinguishable from the art of record. Accordingly, claim 14 must be reviewed independently.

Independent Claim 17

Regarding claim 17, the Examiner failed to show that the combination of Conway and Cook et al. teaches or suggests each and every element of the claim. Claim 17, in part, calls for the “display of the condition data and the reminder data on a refreshable graphical user interface (GUI).” As previously shown, Conway does not teach the display of such information in any GUI and Cook et al. does not teach or suggest any GUI configuration or the display of data outside of “activity” data that can be visually verified by an operator. See Cook et al., col. 6, lns. 5-8. Such would not include condition data.

Since Conway does not teach any GUI, Conway certainly does not teach a refreshable GUI configured to display condition data and reminder data. Rather, Conway teaches that only “cost figures” and other information to track and control costs are communicated. Conway, col. 25, lns. 1-8. Cook et al. does not teach or suggest the condition data or reminder data because such is outside the scope of Cook et al. as limited to visually verifiable activities.

Also, claim 17 calls for, in part, a plurality of devices in a remote medical facility connected to a consolidation facility and a computer programmed to “enable data transmission to the remote medical facility in addition to the display of the condition data and the reminder data on the refreshable GUI.” As such, claim 17 is clear that the claimed system is capable of not only receiving data from the remote medical facility but is also capable of transmitting data, other than the display of condition and reminder data, back to the remote medical facility. While Conway does teach receiving cost data forwarded from a remote medical facility or patient care facility 350, 352 at a central monitoring center 354, Conway does not teach or suggest that the central monitoring center 354 is capable of sending any data back to the patient care facilities 350, 352 or that the patient care facilities

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350, 352 are capable of receiving data from the central monitoring center 354. Conway, col. 25, Ins. 9–32.

Specifically, Conway teaches unidirectional communication from patient care facilities 350, 352 to the central monitoring center 354. The two embodiments disclosed by Conway for effectuating communication from the patient care facilities 350, 352 to the central monitoring center 354 are limited to forwarding “cost tracking information” or forwarding mrc raw tag readings. *Id.* Nowhere does Conway teach or suggest enabling “data transmission to the remote medical facility in addition to the display of the condition data and the reminder data on the refreshable GUI.” Claim 17.

Furthermore, Cook et al. does not teach or suggest any such “data transmission to the remote medical facility in addition to the display of the condition data and the reminder data on the refreshable GUI.” Claim 17. In fact, the Examiner failed to address this element of the claim with respect to Cook et al. Therefore, the Examiner acknowledged that Cook et al. fails to teach or suggest that which is claimed. For at least these reasons, claim 17 is patentably distinct from the art of record.

Claim 18

Regarding claim 18, the claim calls for the computer to be “further programmed to determine a number of devices in need of immediate attention.” While Conway does teach a system that includes database entries for tracking information such as “Next Maint Date” 139, “Next Maint. Use” 141, and “Next Maint. Time” 143, Conway does not teach or suggest any means configured to determine “a number of devices in need of immediate attention.” See Conway Figs. 7A–7D and accompanying description at col. 8, ln. 50 to col. 11, ln. 50. First, Conway does not teach or suggest utilizing the above-cited database entries for anything more than compiling cost tracking data. See Conway, col. 4, Ins. 64–66 and col. 25, Ins. 1–8. Second, even if Conway were to provide a means to extrapolate more than cost tracking data from the database, Conway does not teach or suggest any criteria for determining “a number of devices in need of immediate attention,” as claimed. That is, as explicitly explained in the Detailed Description Section of the present application, devices in need of immediate attention include “a particular device of the medical institution [that has] suffered a power failure or ... a particular mobile item [that] is out of its allowable range.” Specification, pg. 19, ¶1. Furthermore, the Detailed Description Section also states that a device in need of immediate attention may also include a device in need of calibration to

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ensure proper functioning or a device approaching its performance limit or preventive maintenance schedule date. *Id.*

Additionally, the Examiner failed to address this element of the claim with respect to Cook et al. Therefore, it seems apparent that the Examiner acknowledged that Cook et al. fails to teach or suggest that which is claimed. As such, claim 18 includes subject matter that is patentably distinct from the art of record beyond the chain of dependency and required separate consideration.

Claim 20

Regarding claim 20, the Examiner recognized that "Conway does not teach marketing data, customer-entered data, and messages are consolidated." April 21, 2004 Office Action, pg. 4, ¶3. However, as previously explained in detail, the Examiner improperly concluded that such limitations may be ignored. See In re Lowry, 32 F.3d at 1584. These claim elements may not be ignored. They are intertwined with the system and generated by a computerized system. Upon proper review and consideration of these elements it is readily apparent that neither Conway nor Cook et al. teaches or suggests that which is claimed. As such, claim 20 is patentably distinct from the art of record beyond the chain of dependency and requires independent review.

Claim 21

Regarding claim 21, the claim calls for the system to include "network monitoring systems" and "news providing systems." Neither Conway nor Cook et al. teaches or suggests any network monitoring systems or news providing systems. However, the Examiner failed to even address these elements. As such, the Examiner has clearly failed to establish a *prima facie* case of obviousness. For all of these reasons, claim 21 is patentably distinct from the art of record beyond the chain of dependency and requires independent review.

Claim 23

Regarding claim 23, given that specific elements of the claim were unaddressed, it appears that the Examiner ignored the elements of the claim given the Examiner's misapplication and misinterpretation of *In re Gulack* and *In re Lowry*. However, as previously shown, the Examiner is "not at liberty to ignore such limitations." In re Lowry, 32 F.3d at 1584. Therefore, as neither Conway nor Cook et al. teaches or suggests a computer programmed "to display on the GUI general information including industry news, device news, technology news, and news relating to the remote facility," claim 23 is

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patently distinct from the art of record beyond the chain of dependency and requires independent review.

Claim 25

Claim 25, in part, calls for manually entered data to be acquired from "both the remote facility and remotely from the remote facility." Conway teaches a system where data is acquired at a caregiver monitoring center 354 from patient care facilities 350, 352 but does not teach or suggest that data may be acquired from anywhere other than the patient care facilities 350, 352. See Conway, col. 25, lns. 9-32. Furthermore, Cook et al. teaches away from manual data entry by stating that all data is gathered by sensor data rather than manually. In fact, Cook et al. states that "[s]ince the sensor data from a remote power plant is typically examined by hand, the ability to extract what processes actually occurred from raw data is a vast improvement in speed, repeatability, fineness of the analysis, and accuracy, compared to manual analysis." Cook et al., col. 5, lns. 42-46 (emphasis added). Therefore, Cook et al. precludes manual data entry/analysis and cannot be combined with Conway for this purpose under MPEP §2141 or §2145, which precludes the combination of references that teach away from such a combination or would be rendered unfit for an intended purpose if so combined. As such, claim 25 is patentably distinct from the art of record and must be separately considered from any group.

Claim 32-34

Regarding claims 32-34, the Examiner failed to address that which is claimed. The MPEP is clear that to establish a *prima facie* case of obviousness, the Examiner carries the burden of affirmatively showing that the art of record teaches or suggests each and every element of each and every claim. MPEP §2143. The Examiner has clearly failed to meet this burden; therefore, no basis for rejection of claims 32-34 remains.

10. REJECTION UNDER §103(A) BASED ON CONWAY AND COOK ET AL. IN FURTHER VIEW OF GIDWANI

Claim 12

Regarding claim 12, the claim calls for "a number of the alert indicators, a number of the reminder indicators, and a number of general information textlinks are further configured to link a user upon selection to a number of information specific GUIs." Again, as Conway does not teach a GUI of any kind, Conway certainly does not teach or suggest a GUI having a

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number of indicators and a number of textlinks configured to link a user to other information specific GUIs. Furthermore, Cook et al. does not teach or suggest any such GUI having "a number of the alert indicators, a number of the reminder indicators, and a number of general information textlinks [that] are further configured to link a user upon selection to a number of information specific GUIs." Claim 12. Again, the Examiner simply chose to ignore these explicitly recited claim elements. Furthermore, Gidwani does not teach or suggest these limitations, and the Examiner has not explained this shortcoming of the art of record. As such, claim 12 is patentably distinct from the art of record above and beyond the chain of dependency.

11. CONCLUSION

From the context of the Examiner's rejections and the art of record, it appears that the Examiner believes Appellant is purporting to have invented a method and system of electronically displaying data relating to a healthcare facility. Appellant is not claiming inventorship of such a generic system. Appellant acknowledges that the art includes teaching of such a generic system. In contrast to the known art, Appellant claims a specific method and system of gathering, processing, analyzing, and conveying specific data. The art neither teaches nor suggests the claimed method and system. Moreover, it is this specificity, as set forth explicitly in the claims, that the Examiner has disregarded.

To further clarify this point, Appellant offers the following analogy. A number of techniques are recognized in the art for providing power to a load. In general, these techniques, by definition, require an electrical link and an energy source. The differences in these techniques lie in the details of how the links are configured, controlled, managed, connected, etc. For example, a system that utilizes an internal engine to power a load is vastly different than a system that utilizes transmission power to power that same load, even though both systems provide power to the load from an "energy source" over a general "electrical link." The United States Patent Office has issued a plethora of patents directed to providing power. The novelty of these patents is in the details of how the power is provided. The same is true in the present application. The patentability lies in the detail of what type of data is gathered, how it is gathered, how it is analyzed, and how it is used and conveyed. It is these details that define the present invention over the art of record, as is presently claimed.

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At least in view of the above remarks, Appellant respectfully submits that the Examiner has provided no supportable position or evidence that claims 1-26 are obvious under §103(a). Accordingly, Appellant respectfully requests that the Board find claims 1-34 patentable over the prior art of record and withdraw all outstanding rejections.

General Authorization for Extension of Time

In accordance with 37 C.F.R. §1.136, Appellant hereby provides a general authorization to treat this and any future reply requiring an extension of time as incorporating a request therefore. Furthermore, Appellant authorizes the Commissioner to charge deposit account no. 50-2402 the appropriate fee for an extension of time or any other fee which may be currently due, including the \$320.00 fee for filing this Appeal Brief Under 37 C.F.R. §1.17(c).

Respectfully submitted,



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10. APPENDIX OF CLAIMS ON APPEAL

1. (Previously Presented) A method for remotely managing an institution comprising the steps of:

remotely collecting condition data representative of device status for a number of devices utilized in an institution, the condition data segregated into device diagnostic data and device reminder data;

storing the condition data on a database at a centralized facility;

reviewing the condition data to identify at least the device diagnostic data and the device reminder data; and

separately displaying and identifying on a graphical user interface (GUI) the device diagnostic data and the device reminder data.

2. (Original) The method of claim 1 further comprising the step of automatically updating the GUI on one of user refreshing and user accessing of the GUI.

3. (Original) The method of claim 1 further comprising the step of indicating on the GUI the devices requiring immediate attention including identifying the devices in need of repair, servicing, and updating.

4. (Original) The method of claim 1 further comprising the step of displaying on the GUI a reminder profile including a list of devices that require routine attention.

5. (Previously Presented) The method of claim 1 wherein the institution is a medical institution and further comprising the step of displaying on the GUI news updates relating to the devices in the medical institutions.

6. (Original) The method of claim 5 further comprising the step of displaying news links to a number of news GUIs configured to display information about one of a device, a device technology, and a device development.

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7. (Original) The method of claim 1 further comprising the step of identifying on the GUI a device location within the medical institution and further comprising the step of displaying on the GUI one of a department and an individual responsible for immediate management and monitoring of the device.

8. (Original) The method of claim 1 further comprising the step of displaying on the GUI billing information for a device.

9. (Previously Presented) A graphical user interface (GUI) for a remotely located host configured to display management information for a plurality of devices comprising:

an alert section having a number of alert indicators configured to indicate urgent items relating to a device;

a reminder section having a number of reminder indicators configured to display scheduled items relating to the device; and

a general information section having a number of general information textlinks configured to display product updates and technology news specific to the device.

10. (Original) The GUI of claim 9 wherein the number of alert indicators, the number of reminder indicators, and the number of general information textlinks automatically update with each user access.

11. (Original) The GUI of claim 9 wherein the number of alert indicators, the number of reminder indicators, and the number of general information textlinks are tailored to be specific to a particular user.

12. (Original) The GUI of claim 9 wherein a number of the alert indicators, a number of the reminder indicators, and a number of general information textlinks are further configured to link a user upon selection to a number of information specific GUIs.

13. (Original) The GUI of claim 9 configured to be accessed via an Internet connection.

14. (Previously Presented) The GUI of claim 9 further comprising a number of host navigational tabs including a "Services Home" tab, a "Solution Services" tab, a "Services" tab, an "Asset Management" tab, a "Financial Services" tab, an "Education" tab, and a "Contact Device Provider" tab, wherein the number of navigational tabs are configured to link a user to a number of service GUIs.

15. (Original) The GUI of claim 9 further configured to display a consolidation of automatically generated data and manually generated data including marketing data, customer-entered data, and messages from services and sales personnel.

16. (Original) The GUI of claim 9 wherein the host includes a medical institution.

17. (Previously Presented) A system to display consolidation information for a remote medical facility comprising;

a computerized network;

a readable memory electronically linked to the network;

a plurality of computers connected to the network wherein at least one of the plurality of computers displays electronic data to a user in the form of a graphical user interface (GUI);

a processing unit capable of calling a GUI on demand and causing a representation of condition data of a medical facility to be displayed upon request by a user;

a plurality of devices in a remote medical facility connected to a consolidation facility; and

a computer at the consolidation facility programmed to:

continually acquire condition data of the plurality of devices;

continually acquire reminder data wherein the reminder data includes a plurality of scheduled tasks;

display the condition data and the reminder data on a refreshable graphical user interface (GUI); and

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enable data transmission to the remote medical facility in addition to the display of the condition data and the reminder data on the refreshable GUI.

18. (Original) The system of claim 17 wherein the computer is further programmed to determine a number of devices in need of immediate attention.

19. (Original) The system of claim 17 wherein the computer is further programmed to automatically display on the GUI updated condition data and the reminder data with each user access of the GUI.

20. (Original) The system of claim 17 wherein the computer is further programmed to automatically consolidate data from a number of auto-generation systems and manual generation systems including marketing messaging information, messages from remote personnel, and customer input information, and display the consolidated data on the GUI.

21. (Original) The system of claim 20 wherein the auto-generation systems include remote monitoring and diagnostic systems, network monitoring systems, dynamic asset tracking systems, billing, invoicing, and control management systems, and news providing systems.

22. (Original) The system of claim 17 wherein the computer is further programmed to acquire the condition data and the reminder data via a LAN, a WAN, a telephone system, a cable communication system, and a wireless system.

23. (Original) The system of claim 17 wherein the computer is further programmed to display on the GUI general information including industry news, device news, technology news, and news relating to the remote facility.

24. (Original) The system of claim 17 wherein the remote facility is a medical institution and the plurality of devices include medical diagnostic and medical imaging devices.

25. (Previously Presented) A computer data signal embodied in a carrier wave and representing a sequence of instructions that when executed by one or more computers causes the one or more computers to:

acquire automatically-generated data from a number of auto-generation data sources within a remote facility;

acquire manually entered data from both the remote facility and remotely from the remote facility;

at a centralized processing station, consolidate the automatically generated data and the manually entered data; and

display the consolidated data on a graphical user interface (GUI), wherein the GUI is accessible from the remote facility.

26. (Original) The computer data signal of claim 25 wherein the sequence of instructions further causes the one or more computers to display the GUI in an Internet accessible web page.

27. (Original) The computer data signal of claim 25 wherein the sequence of instructions further causes the one or more computers to dynamically consolidate the manually entered data and the automatically generated data and display updated consolidated data with each user access of the GUI.

28. (Original) The computer data signal of claim 25 wherein the sequence of instructions further causes the one or more computers to receive data communications as a user interacts with the GUI and update the consolidated data in response to the user-initiated data communications.

29. (Original) The computer data signal of claim 25 wherein the auto-generation sources include remote monitoring and diagnostic systems, network monitoring systems, dynamic asset tracking systems, dispatching and incident tracking systems, and Internet searching systems.

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30. (Original) The computer data signal of claim 25 wherein the manual generation data sources includes messaging systems and customer feedback systems.

31. (Original) The computer data signal of claim 25 wherein the remote facility includes a medical institution having a plurality of medical devices.

32. (Previously Presented) The method of claim 1 wherein the device diagnostic data includes alert data requiring immediate operator attention and the device reminder data includes reminder data for eventual operator attention.

33. (Previously Presented) The system of claim 17 wherein the computer is further programmed to enable data transmission to allow information to be provided to the plurality of devices in the remote medical facility.

34. (Previously Presented) The system of claim 33 wherein the computer is further programmed to receive manually entered data and enable data transmission to allow information to be provided to the plurality of devices in the remote medical facility in response to receiving the manually entered data.